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IN THE UNLIMITED JURISDICTION [SUPERIOR] COURT OF THE
 STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN FRANCISCO

BLESSED HERVE,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO,
 ALICE DICROCE, GLENN ALCARAZ, MARC H.
 CHAN AND DOES 1-100,

Defendants.

No: CPF 03-502 895

**COMPLAINT AND DEMAND
 FOR JURY TRIAL**

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Blessed Herve (Plaintiff), hereby alleges as follows:

1. Plaintiff is a resident of the City and County of San Francisco. The Plaintiff is a citizen of the Republic of Congo, and resides in the United States under a grant of political asylum.

2. Defendants, City and County of San Francisco, is a public entity within the meaning of Government Code § 811.2 and a local public entity within the meaning of Government Code § 900.4.

3. Defendants, Alice DiCroce, Glenn Alcaraz, and Marc H. Chan (the Officers) are and at all relevant times mentioned herein, employed as police officers by the City and County of San Francisco and were acting within the scope of their employment as police officers for the

1 City and County of San Francisco. At all relevant times mentioned herein, each Officer was an
2 agent, principal, servant, franchisee, joint venturer, partner, employee and/or co-conspirator of
3 the other Officers; that at all of said times each of said Officers was acting within the course and
4 scope of said agency, service, franchise, joint venture, partnership, employment and/or
5 conspiracy.

6 4. Defendants, Does 1 through 100, inclusive, are sued herein by fictitious names
7 pursuant to C.C.P. §474. Plaintiff does not at this time know the true names, capacities nor
8 specific activities of said defendants, but alleges on information and belief that each of said
9 defendants is or may be legally responsible for the injuries and damages to plaintiff alleged
10 below and plaintiff therefore prays that the names of said defendants and their activities may be
11 inserted herein when said name, capacity and/or activity is ascertained. At all relevant times
12 herein mentioned, each Doe defendant was an agent, principal, servant, franchisee, joint venturer,
13 partner, employee and co-conspirator of the other defendants herein mentioned; that at all of said
14 times each of said defendants was acting within the course and scope of said agency, service,
15 franchise, joint venture, partnership, employment and conspiracy.

16 5. With respect to Plaintiff's claims against the City and County of San Francisco,
17 Plaintiff has satisfied all conditions precedent to bringing said claims by filing the tort claim
18 (attached hereto as Exhibit A) with said Defendant. Said Defendant rejected said tort claim, and
19 a copy of said rejection is attached hereto as Exhibit B.

20 6. On about March 27, 2003, said Defendant Officers and Does 1 through 10
21 verbally assaulted and physically battered the Plaintiff (a) at a location near the intersection of
22 Geary and Taylor Streets in San Francisco, (b) in a police patrol car operated by certain of the
23 Defendant Officers, and (c) at the San Francisco police Central Station. Among other things, at
24 Central Station, Defendant Officer DiCroce punched the Plaintiff in the stomach while the
25 Plaintiff's hands were handcuffed behind his back, physically forced the Plaintiff to sit on a
26 bench covered in human feces, choked the Plaintiff on the neck, slammed the Plaintiff's head
27 into the wall of a holding cell at Central Station, kicked the Plaintiff in his testicles and grabbed
28 his testicles. Defendant Officer DiCroce also made numerous threatening remarks to the Plaintiff

1 indicating that her abusive actions were motivated by racial hatred, hatred against the Plaintiff
 2 because of his national origin, and/or hatred against the Plaintiff because of his gender, race,
 3 national origin and/or sexual orientation. Said threatening language included, without limitation,
 4 calling the Plaintiff a nigger while said Defendant physically abused the Plaintiff as alleged
 5 above. The other Defendant Officers and Does 1 through 10 watched these events occur and
 6 stood by idly, and did not attempt to stop the battery inflicted on Plaintiff by Officer DiCroce.
 7 Indeed, said defendants actively encouraged Defendant DiCroce's battery of the Plaintiff with
 8 words and by laughing at the plight of the Plaintiff. At no time was Plaintiff being taken to the
 9 Central Station for the purpose of being booked. At the conclusion of the abuse described above,
 10 Plaintiff was given a misdemeanor citation to appear before a magistrate, and released, without
 11 booking. The misdemeanor allegation was later dismissed.

12 7. Said Defendants, together with Defendant Officer DiCroce, and upon information
 13 and belief, Does 11-100, all conspired together in an attempt to cover up the abuse leveled upon
 14 the Plaintiff. Evidence of said conspiracy include, without limitation, that said Defendant
 15 Officers, including said Doe defendants, prepared, authorized and or ratified the filing of a false
 16 police report that, among other things, does not mention that this abuse occurred. Furthermore,
 17 upon information and belief, Plaintiff alleges that said Defendants failed to file necessary reports
 18 in order to cover up the fact that the abuse had occurred. The Defendants activities as described
 19 in this paragraph were done intentionally and with a willful desire to violate Plaintiffs civil
 20 rights, and to cause the Plaintiff to suffer injury, pain, fear, anxiety, humiliation, physical and
 21 emotional distress. The actions of the Defendants described herein were willful and malicious
 22 and were intended to oppress and cause injury to plaintiff; furthermore, said Defendants acted
 23 knowingly, willfully, and maliciously, and with reckless and callous disregard for Plaintiff's
 24 safety, health and his civil rights. The aforesaid Defendants either performed, authorized or
 25 ratified said malicious, willful and callous conduct. Therefore, Plaintiff prays for an assessment
 26 of punitive damages against said Defendants.

27 8. The Plaintiff further alleges on information and belief that Does 11 through 100
 28 are members of the San Francisco Police Department and have conspired with the Defendant

1 Officers in an attempt to cover up the fact that Plaintiff suffered these abuses at the hands of the
 2 Defendant Officers. Acts in furtherance of said conspiracy/cover-up include without limitation
 3 failing to file a police reports concerning the abuse after the Plaintiff reported being abused.

4 **FIRST CAUSE OF ACTION AGAINST DEFENDANT OFFICERS ONLY**
 5 **VIOLATION OF PLAINTIFFS CIVIL RIGHTS**
 6 **(42 U.S.C. § 1983)**

7 9. Plaintiff hereby incorporates each of the foregoing allegations as though fully set
 8 forth in this Cause of Action.

9 10. The Actions of the Defendant Officers and Does 1 through 100 described herein
 10 constitute a deprivation of the Plaintiff s Constitutional right to Due Process and Equal
 11 Protection guaranteed by the Fourteenth Amendment to the Constitution. Said acts also
 12 constitute a violation of the rights secured to the Plaintiff under statutes and/or other laws of the
 13 United States, including without limitation 18 U.S.C. § 242, which states in pertinent part:

14 Whoever, under color of any law, statute, ordinance, regulation, or
 15 custom, willfully subjects any person in any State, Territory,
 16 Commonwealth, Possession, or District to the deprivation of any
 17 rights, privileges, or immunities secured or protected by the
 18 Constitution or laws of the United States, or to different
 19 punishments, pains, or penalties, on account of such person being
 20 an alien, or by reason of his color, or race, than are prescribed for
 21 the punishment of citizens, shall be fined under this title or
 22 imprisoned not more than one year, or both; and if bodily injury
 23 results from the acts committed in violation of this section . . . shall
 24 be fined under this title or imprisoned not more than ten years, or
 25 both; . . . aggravated sexual abuse, or an attempt to commit
 26 aggravated sexual abuse, . . . shall be fined under this title, or
 27 imprisoned for any term of years or for life, or both. . . (Emphasis
 28 added)

11. The actions of the Defendant Officers were performed under color of state law;
 namely under color of their position as officers in the San Francisco Police Department and
 violated Plaintiff s Constitutional rights and rights secured by statute as set forth above.

12. As a direct and proximate result of the violation of Plaintiff s Constitutional and
 statute guaranteed rights, Plaintiff has suffered general and special damages in an amount to be
 proven at trial. Said damages include, but are not limited to: Plaintiff suffered personal injuries
 including without limitation bruises, pain, humiliation, fear, anxiety, and extreme mental and
 emotional distress; Plaintiff has incurred medical bills to treat his personal injuries; Plaintiff has

1 also incurred other costs and expenses including without limitation the cost of cleaning his
 2 clothing to remove human feces (which the Officers forced Plaintiff to sit in). The Defendants
 3 conspired to deprive Plaintiff of his civil rights, by doing acts which include without limitation,
 4 physically abusing Plaintiff; and attempting to cover up the fact that their abuse of the Plaintiff
 5 had occurred. Such conduct caused and continues to cause Plaintiff to suffer fear, humiliation
 6 and severe emotional distress and physical manifestations of said distress, including headaches.

7 **SECOND CAUSE OF ACTION AGAINST DEFENDANT OFFICERS ONLY**
 8 **CONSPIRACY TO VIOLATE PLAINTIFF S CIVIL RIGHTS**
 9 **(42 U.S.C. § 1985)**

10 13. Plaintiff hereby incorporates each of the foregoing allegations as though fully set
 11 forth in this Cause of Action.

12 14. 42 U.S.C. § 1985(2) provides a cause of action for any person who is injured
 13 when two or more persons conspire for the purpose of impeding, hindering, obstructing, or
 14 defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to
 15 any citizen the equal protection of the laws.

16 15. Further, 42 U.S.C. § 1985(3) provides a cause of action for any person who is
 17 injured when two or more persons in any State or Territory conspire . . . for the purpose of
 18 depriving, either directly or indirectly, any person or class of persons of the equal protection of
 19 the laws, or of equal privileges and immunities under the laws.

20 16. The actions of the Defendants constitute an unlawful conspiracy to deprive the
 21 Plaintiff of his civil rights, in violation of the above-quoted provisions from 42 U.S.C. §§
 22 1985(2) and (3).

23 17. The actions of the Defendants were the direct and proximate cause of the
 24 Plaintiff s injuries and damages as described above.

25 **THIRD CAUSE OF ACTION**
 26 **VIOLATION OF RIGHT TO BE FREE FROM VIOLENCE**
 27 **(Civil Code § 52(b); Civil Code § 51.7(a))**

28 18. Plaintiff hereby incorporates each of the foregoing allegations as though fully set
 29 forth in this Cause of Action.

19. This Third Cause of Action is brought pursuant to California Civil Code section

52(b), which states, in pertinent part:

Whoever denies the right provided by Section 51.7 or 51.9, or aids, incites, or conspires in that denial, is liable for each and every offense for the actual damages suffered by any person denied that right and, in addition, the following: (1) An amount to be determined by a jury, or a court sitting without a jury, for exemplary damages. (2) A civil penalty of twenty-five thousand dollars (\$25,000) to be awarded to the person denied the right provided by Section 51.7 in any action brought by the person denied the right, or by the Attorney General, a district attorney, or a city attorney. (3) Attorney's fees as may be determined by the court.

20. The actions of the Defendants, as described herein, violated Civil Code section 51.7(a), which states, in pertinent part:

All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics. The identification in this subdivision of particular bases of discrimination is illustrative rather than restrictive. (Emphasis added)

21. The Defendants actions were the direct and proximate cause of the Plaintiff's injuries and damages as described herein.

**FOURTH CAUSE OF ACTION AGAINST DEFENDANT OFFICERS ONLY
INTERFERENCE WITH PLAINTIFF'S CIVIL RIGHTS
(Civil Code § 52.1)**

22. This Fourth Cause of Action is brought pursuant to Civil Code section 52.1, which states, in pertinent part:

(a) If a person or persons, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state. . .

(b) Any individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with, as described in subdivision (a), may institute and prosecute in his or her own name and on his or her own behalf a civil action for damages, including, but not limited to, damages under Section 52, injunctive relief, and other appropriate equitable relief to protect the peaceable exercise or enjoyment of the right or rights secured.

(c) An action brought pursuant to subdivision (a) or (b) may be

1 filed either in the superior court for the county in which the
 2 conduct complained of occurred or in the superior court for the
 3 county in which a person whose conduct complained of resides or
 has his or her place of business. . .

* * * *

(h) In addition to any damages, injunction, or other equitable relief
 4 awarded in an action brought pursuant to subdivision (b), the court
 5 may award the petitioner or plaintiff reasonable attorney's fees

23. The actions of the Defendants described herein constitute a violation of section
 6 52.1(a) in that said Defendants employed threats, intimidation, and/or coercion to interfere with
 7 the Plaintiff's rights guaranteed by the Due Process and Equal Protection clauses of the
 8 Fourteenth Amendment to the Constitution of the United States, as well as rights guaranteed by
 9 the statutes and/or other laws of the United States, including without limitation 18 U.S.C. § 242.
 10 The Defendants also employed threats, intimidation and/or coercion to interfere with the
 11 Plaintiff's rights guaranteed by the California Constitution and the laws of the California,
 12 including without limitation rights guaranteed by Civil Code section 51.7 (described above).

24. The Defendant Officers' actions in violation of these statutes and Constitutional
 14 provisions were the direct and proximate cause of the Plaintiff's injuries and damages as
 15 described herein.

17 **FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS** 18 **BATTERY**

25. Plaintiff hereby incorporates each of the foregoing allegations as though fully set
 19 forth in this Cause of Action.

26. In doing the acts alleged herein, the Defendant Officers acted with the intent to
 22 make a harmful contact with plaintiff's person.

27. At no time did Plaintiff consent to any of the acts of Defendant Officer alleged
 24 herein.

28. The Defendants are therefore guilty of committing a battery against the Plaintiff.

29. The actions of the Defendants were the direct and proximate cause of the injuries
 28 and damages suffered by the Plaintiff as alleged herein.

1 injuries and damages as described herein.

2 **SEVENTH CAUSE OF ACTION**
 3 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

4 35. Plaintiff hereby incorporates each of the foregoing allegations as though fully set
 5 forth in this Cause of Action.

6 36. The actions of the Defendants described herein were extreme and outrageous and
 7 were intentional and malicious and done for the purpose of causing Plaintiff to suffer
 8 humiliation, mental anguish, and emotional and physical distress.
 9

10 37. As the proximate result of the acts of the Defendants, Plaintiff suffered
 11 humiliation, mental anguish, and emotional and physical distress, and has been injured in mind
 12 and body as described above and has incurred the damages described above.

13 **REQUEST FOR RELIEF**

14 Plaintiff therefore respectfully requests that this Court grant the following relief:

15 1. Award Plaintiff special and general damages according to proof.

16 2. With respect to Plaintiff s Second and Third Causes of Action, award the Plaintiff a
 17 civil penalty of \$25,000 against each of the Defendant Officers, in accordance with Civil Code §
 18 52(b)(2).
 19

20 3. Award the Plaintiff costs and attorneys fees in accordance with 42 U.S.C. § 1988(b),
 21 Civil Code §§ 52.1(h) and 52(b)(3) and any other applicable statute.

22 4. Award exemplary and punitive damage against the Defendant Officers.

23 5. Award the Plaintiff any other relief that the Court determines to be just and equitable.
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2 **DEMAND FOR JURY TRIAL**

3 Plaintiffs hereby demand a jury trial.

4 Respectfully submitted,

5 Dated: _____, 2003

6 COX & MOYER

7 By: _____

8 STEPHEN T. COX

9 Attorneys for Plaintiff, Blessed Herve

VERIFICATION

I, Blessed Herve, hereby verify that I have read the foregoing **COMPLAINT AND DEMAND FOR JURY TRIAL** I certify that the facts stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____

Blessed Herve

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